

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL Nos.1525 of 1998 & 1936 of 1999

COMMON JUDGMENT:

Since the facts, issues involved, parties, and the judgment under challenge in both these appeals are one and the same, both these appeals are disposed of by this Common Judgment.

2. Criminal Appeal No.1525 of 1998 is filed by the appellants/accused Nos.1 and 2, challenging the conviction recorded against them for the offence punishable under Section 376(g) of I.P.C. sentencing them to undergo rigorous imprisonment for a period of ten (10) years and to pay fine of Rs.2,000/-, by the judgment, dated 02.11.1998, passed in S.C.No.38 of 1997, by the learned I Additional Assistant Sessions Judge, R.R.District at Kothapet, Hyderabad.

3. Criminal Appeal No.1936 of 1999 is filed by the State seeking enhancement of the sentence of imprisonment passed against the accused Nos.1 and 2 by the judgment, dated 02.11.1998, passed in S.C.No.38 of 1997, by the learned I Additional Assistant Sessions Judge, R.R.District at Kothapet, Hyderabad.

4. Heard the learned counsel for the appellants-accused Nos.1 and 2 in CrI.A.No.1525 of 1998 and respondents in CrI.A.No.1936 of 1999; and, the learned Additional Public Prosecutor appearing for the appellant-State in CrI.A.No.1936 of 1999 and respondent in CrI.A.No.1525 of 1998; and perused the record.

5. The learned counsel for the accused Nos.1 and 2 would submit that the findings of the trial Court are contrary to the law and facts of the case. The trial Court relied on the solitary testimony of P.W.2 – victim in this case. There are no other witnesses to prove the accusations against the accused Nos.1 and 2. As per the prosecution case, the alleged offence said to have taken place on hard surface. Scene of offence is about 100 metres away from the womens hostel as well as one Kirana Shop. The victim identified the accused Nos.1 and 2 after twelve days of the alleged incident. She was shown photographs of the accused and the identification is doubtful. There are no abrasions and injuries to believe that the offence is committed, as projected by the prosecution. The entire prosecution case is false. There are no circumstances to convict and sentence the accused Nos.1 and 2 and ultimately prayed to set aside the conviction and sentence imposed against the accused Nos.1 and 2 by the judgment, dated 02.11.1998, passed in S.C.No.38 of 1997, by the learned I Additional Assistant Sessions Judge, R.R.District at Kothapet, Hyderabad, and acquit them of the charge framed against them in the said Sessions Case.

6. On the other hand, the learned Assistant Public Prosecutor would submit that the Court below has rightly believed the evidence of P.W.1 to P.W.15. P.W.2, who is the victim, has clearly and categorically deposed about the involvement of the accused Nos.1 and 2 in this case. There is ocular and documentary evidence as well as Material Objects in M.O.1 to M.O.16 which are seized from the scene of offence. The trial Court rightly found the

accused Nos.1 and 2 guilty for the offence punishable under Section 376(g) of I.P.C. The trial Court convicted and sentenced the accused Nos.1 and 2 to suffer rigorous imprisonment for ten (10) years and to pay fine of Rs.2,000/-, which is inadequate. The sentence imposed against the accused Nos.1 and 2, under the circumstances of the case, is required to be enhanced to imprisonment of life and prayed to allow Criminal Appeal No.1936 of 1999 and dismiss Criminal Appeal No.1525 of 1998 accordingly.

7. In view of the contentions raised by the learned counsel for both the sides, the point for determination is whether the conviction and sentence recorded against the accused Nos.1 and 2 by the trial Court for the offence punishable under Section 376(g) of I.P.C. is sustainable, or whether the sentence of imprisonment is required to be enhanced to life imprisonment.

8. The prosecution case is that on 15.08.1995, at 03:15 PM, the victim went to Lingampally Shopping Complex along with her colleague and returned to Central University Campus at 05:00 PM. Thereafter, they went to the residential house of Dr.Ashok Chaterji, who was not present in the house. They waited till 05:30 PM. Thereafter, the victim (P.W.2) alone went to Gopala Krishna Kirana Shop to purchase turmeric powder. After purchasing the same, she was proceeding to her hostel room alone at 06:00 PM. When she was passing to the hostel, accused No.1 came to her in opposite direction, pushed her towards bushes by the side of the road. Accused No.1 caught hold of her hands, dragged her into the bushes, in spite of her resistance. Accused No.1 forcefully pressed her mouth. Meanwhile, accused No.2 and another juvenile

offender came there. The juvenile offender guarded the place and accused Nos.1 and 2 committed rape on the victim. Thereafter, the victim informed the incident to the de-facto complainant (P.W.1) and others. Then, P.W.1 lodged a report with the police and ultimately, the accused Nos.1 and 2 and the juvenile offender were prosecuted.

9. The de-facto complainant in this case is R.K.B.Sharma. His (P.W.1) evidence is that he is the Chief Security Officer of the Central University, Hyderabad. On 15.08.1995, at about 06:30 PM, he received a telephone call from Dr.Ruma Purakat that one girl student was gang raped by some persons. He rushed to the hostel premises and also to the residential plot of Dr.Ruma Purakat, which is opposite to the ladies hostel. He found the victim (P.W.2) and other university staff members there. The victim narrated the incident to him. Thereafter, he immediately informed the same to the Registrar and the Vice Chancellor of the University, on phone. He also lodged a report under Ex.P.1 with the police concerned.

10. The evidence of P.W.2 – Miss Soma Mukhopadhyaya, the victim, is that she belongs to Calcutta. In the year 1973, she joined Ph.D., under the supervision of Dr.Ashok Chaterji. 15.08.1995 was a holiday, being independence day. She used to reside in the ladies hostel No.II in Room No.287 in the University Campus. On 15.08.1995, she left the hostel at 01:30 PM and went to her Department. At 03:15 PM, she left the department and went to Lingampally Shopping Complex along with one Goutham Mukherji, who is her colleague. She returned to the University

campus at 05:00 PM and went to the residential plot of Ashok Chaterji, her professor. He was not there. Thereafter, she went to Gopal Kirana Shop to purchase turmeric powder. After purchasing the turmeric powder, at 06:00 PM, she was proceeding towards her hostel. She passed half of the distance. Then, accused No.1 came to her and pushed her towards the bushes by the side of the road. She resisted accused No.1, but accused No.1 pressed her mouth with his hands and dragged her into bushes. Accused No.2 and another juvenile offender joined accused No.1. In spite of her resistance, accused No.1 committed rape on her and later accused No.2 committed rape on her. Accused No.3 (Anand, Juvenile) guarded the place. After committing rape on her, accused Nos.1 and 2 threatened her to kill if she discloses the incident to others and left the scene. Thereafter, she came to the road, met her hostel student by name Seeta Rathnam Bhanu (P.W.3) and informed her about the incident. She lost her belongings, i.e., one leather purse, chappals, turmeric powder, umbrella, library receipt etc., in the incident. With the help of P.W.3, the victim went to the hostel and informed about the incident to the Security personnel. Later, she went to the residential plot of Dr.Ruma Purakat, where she found Professor Tondon, his wife and some of the students. To them also, she narrated the incident. Thereafter, the hostel warden Dr.Ruma Purakat and the University Health Officer came there. She received injuries, there was bleeding from her private parts during the commission of the offence. She was shifted to University Health Centre and from there, she was shifted to Gandhi Hospital. She was examined by the police in the hospital. She gave the identification and descriptive particulars of the assailants.

Later, she identified the three accused, including the juvenile offender, in the identification parade. She also identified accused Nos.1 and 2 during her evidence before the trial Court.

11. There is also evidence of P.W.3 – Miss. Seetha Rathnam Bhanu. Her evidence corroborated with the evidence of P.W.2 on all material particulars. The evidence of P.W.4 – N.Joseph reveals that he joined Ph.D. in Central University in the year 1995. He was staying in a rental room. On 15.08.1995, at about 03:15 PM, he went to University Campus to swim in the tank. While he was swimming in the tank, he found three persons on the bank of the lake. When the said three persons asked for cigarettes, he provided two cigarettes to them. He left University campus at 05:00 PM on that day. Thereafter, he came to know the gang rape in this case. He participated in the Test Identification Parade and he identified the suspects, i.e., accused Nos.1 and 2 and the Juvenile offender.

12. There is also evidence of P.W.5 – Dr.Satya Lakshmi with regard to the receiving information on 15.08.1995 at 06:45 PM stating that one girl of women hostel was raped by a group of persons and she found the victim and she shifted the victim to the Health Centre in ambulance and gave first aid and later shifted the victim to Gandhi Hospital.

13. There is also the evidence of P.W.6 – B.V.Krishna Reddy, who was working as a driver in the Central University. He deposed that on 16.08.1995, at about 10:30 AM, he was called by the Inspector of Police, Chandanagar, to the scene of offence. He

spoke about the conduct of scene of offence panchanama and seizure of M.O.1 to M.O.6, i.e., cut drawer, umbrella, one ladies purse, one library receipt and broken spectacles, one pair of chappals, one turmeric powder packet in a plastic cover from the scene of offence. He signed the panchanama prepared by the police.

14. The evidence of P.W.7 – C.Victor Kumar, who is working as Assistant Security Officer in Central University would reveal that on 17.08.1995 at about 04:30 PM, accused No.2 confessed about the commission of offence along with accused No.1 and the juvenile offender. The police recorded the confessional statements of accused No.2 and in his presence, the police seized M.O.7 – under wear, M.O.8 – Shirt, M.O.9 – Pant, M.O.10 – hand bag from the possession of accused No.2.

15. The evidence of P.W.8 – S.J.Benjman reveal that he was working as Junior Office Assistant in the Central University. On 21.08.1995, at 07:45 PM, he was called to Chandanagar Police Station along with another person and in his presence, accused No.1 confessed about commission of offence along with accused No.2 and the Juvenile offender. The police seized clothes, i.e., White shirt and M.O.12 – under wear from the possession of accused No.1 in his presence.

16. There is also evidence of P.W.9 – A.Santosh Reddy, Additional Judicial Magistrate of First Class, East and North, R.R.District. His evidence is that the police conducted Test Identification Parade on 22.08.1995 in the premises of Central Jail

and in the said parade, the victim and another witness identified the suspects.

17. There is also evidence of P.W.10 – Dr. Vijaya Lakshmi, who was working as Civil Assistant Surgeon in Gandhi Hospital. Her evidence is that on 15.08.1995, at 10:00 PM, she examined the victim and found abrasion on the upper lower lip, scratch marks on the left cheek, contusions on the left cheek, bite marks on the right breast, scratches on the front side of neck. All the injuries were red in colour and fresh. She also found blood stains on the inner thighs and blood stains in the pubic hair, hymen was torned, bleeding was present. She also found 1.5 cm skin depth tear in perineum and she sutured the said tear. She collected the pubic hair clippings and smears on the glass slider. She also seized clothes from the victim and the same were sent to chemical laboratories and considering the report of the chemical laboratories and the injuries on the person and bleeding stains, semen stains on the clothes, she opined that there was sexual intercourse.

18. P.W.11 – Dr.K.Sudhakar Reddy, was working as Assistant Professor, Forensic Medicine. His evidence reveals that on 21.08.1995, he examined the accused No.1 about his sexual potency and issued Ex.P.11 – Sexual Potency Certificate and opined that accused No.1 is capable of performing sexual acts.

19. P.W.12 is the Sub-inspector of police and the investigating officer in this case. P.W.13 deposed that basing on Ex.P.1 report, he registered a case in this crime under Section 376(g) of I.P.C. and issued First Information Report. There is also evidence of

P.W.14 – Dr.M.Shankar, Assistant Professor, Forensic Medicine. As per his evidence, on 18.08.1995, he examined accused No.2 about his potency and issued Ex.P.18 – Potency Certificate to the effect that accused No.2 is capable to perform sexual acts. P.W.15 is the Circle Inspector of Police. He also deposed about the conduct of investigation, filing of charge-sheet against accused Nos.1 and 2 and the Juvenile offender.

20. Though other material witnesses were examined, they also reiterated the prosecution case. Nothing was brought on record to discard their testimony. The main contention of the learned counsel for the accused Nos.1 and 2 is that as per the evidence of the prosecution, the victim was sexually assaulted on a hard surface and if the said version is true, there could have been injuries on the body of the victim. As per the scene of offence Panchanama conducted in this case, M.O.1 to M.O.6, i.e., cut drawer, spectacle of the victim, ladies umbrella, Turmeric powder, one pair of ladies chappal and ladies purse and other material objects were recovered from the scene of offence. M.O.1 – white colour underwear of the victim, M.O.2 – Spectacle of the victim broken, M.O.3 – Ladies Umbrella, M.O.4 – Turmeric powder, M.O.5 – One pair ladies chappal and M.O.6 – purse, belong to the victim (P.W.2). There is no reason for the panch witnesses to depose falsely about the seizure of M.O.1 to M.O.6 at the scene of offence. So also there is no need for the investigation officer to create false scene of offence in this case. There is also specific evidence of P.W.3 with regard to the commission of rape on the victim and taking the victim to the security personnel and the Central

University authorities. There is also clear and cogent evidence of P.W.1 with regard to the manner of commission of rape on the victim by accused Nos.1 and 2, forcefully and against her consent, by dragging her into the bushes. There is also evidence of P.W.10-doctor with regard to the injuries on the body of the victim. There was scratch on her right breast and several other body parts of the victim. Hymen was torn and it was sutured by P.W.10-doctor. There is no reason for the aforementioned witnesses to depose false and implicate the accused Nos.1 and 2 in the case of this nature. There is clear identification of the accused Nos.1 and 2 by the victim in the Test Identification Parade. There is also specific evidence of the victim giving the descriptive particulars of the accused to the investigating officer, when she was examined. There is also evidence of the colleague of victim (P.W.4), who found the accused near the scene of offence prior to the commission of offence. P.W.4 also identified the offenders in this case. There is overwhelming evidence to connect the accused with the alleged offence. There is also clear and cogent evidence on record to believe that the victim was sexually assaulted by accused Nos.1 and 2. The manner in which the offence is committed in this case establishes the requirements of Section 376(g) of I.P.C. Therefore, the trial Court rightly convicted the accused for the said offence and sentenced to suffer ten years rigorous imprisonment and to pay fine of Rs.2,000/-. Viewed from any angle, there is no infirmity in the impugned judgment of the trial Court. The trial Court had awarded the required sentence in this case and there is nothing to enhance the sentence. Both the appeals are devoid of merit and are liable to be dismissed.

21. Accordingly, Criminal Appeal No.1525 of 1998 preferred by the appellants/accused Nos.1 and 2 is dismissed confirming the conviction and sentence passed by the learned I Additional Assistant Sessions Judge, R.R.District at Kothapet, Hyderabad, by the judgment, dated 02.11.1998, passed in S.C.No.38 of 1997.

22. Criminal Appeal No.1936 of 1999 is also dismissed.

23. The appellants/accused Nos.1 and 2 in Criminal Appeal No.1525 of 1998 were granted bail by this Court by suspending the sentence of imprisonment. Since the appeal preferred by them is dismissed, the accused Nos.1 and 2 are directed to surrender before the concerned authorities to serve the remaining period of sentence of imprisonment, failing which, the Court of Sessions/Station House Officer concerned shall take required steps immediately to commit the accused Nos.1 and 2 to prison to serve the remaining sentence of imprisonment, in terms of the impugned judgment.

Miscellaneous petitions, if any, pending in both these appeals, shall stand closed.

Dr. SHAMEEM AKTHER, J

13th November, 2017
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